IN THE HIGH COURT OF BOMBAY AT GOA.

FIRST APPEAL NO.91 OF 2001

1. Special Land Acquisition Officer
(South Goa) Konkan Railway
Corporation Limited,
Amey Guest House,
Davorlim Road,
P.O. Navelim,
Salcete Goa, 403 707.

2. Chief Engineer,
Konkan Railway Corporation Ltd.,
Rawnfond,
near Margao Railway Station,
Margao Goa. ... Appellants.

V/s

1. Bhikan Pissolo Naik Gaunkar,
House No.1067, Kindlem,
Canacona, Goa. ... Respondent.

Mr. E. Afonso, Advocate for the appellants.

Mr. P. Kamat, Advocate for the respondent.

CORAM: A.P. LAVANDE, J.

DATE: 28TH APRIL, 2005.

ORAL JUDGMENT

The appellants challenge the judgment and award dated 09.02.2001 passed by the Additional District Judge, South Goa,

Margao in Land Acquisition No.93/96.

2. By Notification dated 18.10.1994 issued under Section 4 of the Land Acquisition Act (the Act for short) the Government acquired for Konkan Railway Corporation Ltd. large chunks of lands situated at Nagorcem, Palolem. The property bearing survey no. 19/31 (Part) admeasuring 2825 square meters, an area of 1412 square meters being coconut garden and an area of 1413 square meters being paddy field, belonging to the respondent Bhikan Pissolo Naik Gaunkar, the original applicant before the reference Court, was part of the acquired land. The Special Land Acquisition Officer by his award dated 14.02.1996 awarded Rs.5/- per square in respect of the entire acquired land. Aggrieved by the said award, the original applicant sought reference under Section 18 of the Land Acquisition Act and claimed compensation of Rs.150/- per square meter. The reference Court relying upon the Award dated 15.3.1989 (Exhibit AW2/C) which was in respect of acquisition for the proposed approach road to Talpona Galjibag bridge enhanced the market rate from Rs.5/- to Rs.32/- in respect of an area of 1413 square meters (paddy field) and in respect of coconut garden land of an area of 1412 square meters the reference

Court rejected the reference and further ordered that the amount paid as compensation in respect of the said land be adjusted towards the enhanced compensation payable towards the paddy field on the ground that the respondent had been paid Rs.3,00,500/- in respect of 215 coconut trees existing in the acquired land and as such has been fully compensated.

3. The only point for determination which arises in the present appeal is whether the reference Court was justified in enhancing the compensation in respect of the paddy field from Rs.5/- to Rs.32/- per square meter and if not what is the compensation payable ?

4. Mr. Afonso, learned Counsel appearing for the appellants submitted that the reference Court ought not to have relied upon the award dated 15.3.1989 in as much as the acquired land (paddy field) was not comparable to the lands in the said award dated 15.3.1989. He further submitted that the reference Court was not justified in granting increase of 10% that too on compounding basis since the acquired land was paddy field and had no building potential. It is further submitted that in the absence of any evidence as to development around the acquired

land after 1986 the reference Court could not have granted increase of 10% every year. It is further submitted that in a number of connected appeals arising out of the same notification this Court has awarded increase of 5% every year in respect of paddy field and therefore in any event the respondent is not entitled to the increase of 10% every year.

5. Per contra, Mr. Kamat, learned Counsel appearing for the respondent submitted that the reference Court was justified in relying upon the award dated 15.3.1989 which was in respect of similar lands and also was justified in granting increase of 10% every year on compounding basis.

6. I have considered the submissions made by the learned Counsel appearing for the parties. I have perused the records. The reference Court after holding that the acquired land i.e. paddy field was similar to the lands in award dated 15.3.1989 fixed the compensation in respect of the acquired land at the rate of Rs.15/- per square meter in the year 1986. No fault can be found with this approach of the reference Court since the acquired land and the lands in the said award were similar. However, I find considerable merit in the submission of Mr.

Afonso, learned Counsel for the appellants that the increase of 5% and not 10% per year ought to have been granted in view of the fact that the acquired land was paddy field which had several restrictions in so far its use is concerned. Moreover the respondent had not led evidence of any development around the acquired land during the period from 1986 to 1994. In a number of connected appeals arising out of the same notification I have held that increase of 5% and not 10% per year ought to have been granted. Considering the fact that the acquired land was paddy field and there was no evidence of any development around the acquired land during the period from 1986 to 1994, I hold that the increase of 5% per year and not 10% has to be awarded. Therefore the value of the acquired land in the year 1994 works out to Rs.21.75 per square meter. I deem it appropriate to round it up to Rs.22/- per square meter. Therefore the compensation payable in respect of the acquired land of area 1413 square meters (paddy field) is therefore fixed at Rs.22/- per square meter. In respect of the coconut garden, the reference Court has rejected the reference and has ordered that the compensation at the rate of Rs.5/- per square meter awarded by the Special Land Acquisition Officer has to be adjusted against the enhanced compensation paid in respect of

the paddy field. I am of the opinion, that the reference Court was justified in passing such an order. In any event there is no challenge by the respondent to this part of the order and therefore this part of the order passed by the reference Court is maintained.

7. In view of the above discussion, the compensation payable in respect of the paddy field is fixed at Rs.22/- per square meter. The compensation awarded by the Special Land Acquisition Officer at the rate of Rs.5/- per square meter in respect of coconut garden is ordered to be adjusted against the enhanced compensation payable in respect of the paddy field. Consequently award passed by the reference Court is modified as stated above. Needless to mention that the respondent is entitled to all the statutory benefits under the Act.

8. In the result, the appeal is partly allowed in aforesaid terms. No order as to costs.

A.P. LAVANDE, J.

ef.